



WATER QUALITY NEWS

FOR COUNTY AGRICULTURAL COMMISSIONERS

AUGUST 2003

WHAT'S NEW

This is the first issue of DPR's new monthly Water Quality newsletter. Its intent is to update Agricultural Commissioners about current DPR water quality activities, including how we are working with the State Water Resources Control Board and the Regional Water Quality Control Boards. If you have any comments or suggestions, please contact Kathy Brunetti at (916) 324-4100 or kbrunetti@cdpr.ca.gov

STATE AND REGIONAL WATER BOARD PROGRAMS

WASTE DISCHARGE

The Federal Clean Water Act requires that anyone who discharges pollutants into surface water must have a National Pollutant Discharge Elimination System (NPDES) permit. Agriculture is exempt from this provision. However, just as California's pesticide laws have provisions that go beyond FIFRA, California water law also regulates certain discharges not covered by the CWA, including discharges from irrigated agriculture. These discharges are handled by filing a Report of Waste Discharge with the appropriate Regional Water Quality Control Board (RWQCB). The RWQCB then sets the Waste Discharge Requirements (WDRs). WDRs usually set discharge and receiving water limits and require monitoring, reporting and specific actions to prevent water quality from being degraded. If the RWQCB believes it's in the best interests of the state, the Board can issue a waiver of waste discharge instead. The term "waiver" is a misnomer since it is usually not a complete exemption from the requirements. Waivers frequently have provisions to protect water. Several RWQCBs, including the Central Valley Board, have had waivers for irrigated agriculture. Other waivers included such things as swimming pools, timber harvest, and drilling mud.

Recent legislation mandated that all waivers sunset and that RWQCBs must reissue each waiver only if still appropriate. DPR has been working with the RWQCBs as they develop new waivers.

Commercial Pest Control Operations. The Central Valley Regional Water Quality Control Board is preparing a waiver of waste discharge for commercial pest control operations (e.g., business where commercial operators mix, load, and clean equipment). Board staff contacted DPR and asked a number of questions concerning how pesticides are commonly stored, how containers are rinsed, how rinse water is disposed and the relevant DPR laws and regulations. DPR provided information that will make this waiver much more consistent with actual pest control operations. The board is still finalizing this waiver and there is no date yet for a draft for public comment.

Irrigated agriculture. In December 2002, the Central Valley Regional Water Quality Control Board adopted a waiver of waste discharge for irrigated agriculture. The waiver was rescinded due to legal problems and a new waiver, among with monitoring and reporting requirements was adopted on July 11, 2003. DPR met with RWQCB staff before the board hearing and encouraged staff to make changes to the draft waiver that would avoid requirements that duplicated the current pesticide use reporting system. DPR Director Paul Helliher testified at the hearing, discussing DPR's authorities and expressing willingness to work with the board as cooperators in working toward water quality objectives. DPR will continue to work with RWQCB staff to implement the waiver.

TMDLs

Diazinon. The Central Valley RWQCB is developing TMDLs for diazinon in the Sacramento and Feather Rivers and for diazinon and chlorpyrifos in the San Joaquin River. DPR staff have been working cooperatively with RWQCB staff in the development of these TMDLs, including participating in panels at public workshops. The RWQCB has asked DPR to participate in reviewing responses to comments received at the most recent workshop for the Sacramento/Feather TMDL before a final proposal is sent to the board for approval. The San Joaquin TMDL is in earlier stages of development; a final report is due to be issued shortly.

Copper. The San Diego RWQCB will shortly release for public comment a draft TMDL for Shelter Island Yacht Basin, San Diego. The board found that the majority of the copper comes from copper-based antifouling paints. Staff from DPR and the San Diego County Commissioner's office have been involved in preparation of the TMDL and its

implementation plan, and the RWQCB staff have recently requested a formal consultation under terms of the MAA.

LEGAL ISSUES (statutes, regulations and litigation)

Two recent decisions by the Ninth Circuit Court of Appeal have impacted the use of aquatic pesticides in California. In March 2001, the court ruled that the application of an aquatic herbicide to an irrigation canal constituted a discharge of a pollutant that required a permit under the Clean Water Act, even though the pesticide was regulated by FIFRA. On November 4, 2002 the United States Court of Appeals for the ninth circuit issued a decision in the case of League of Wilderness Defenders vs. Harv Forsgren, Regional Forester, USDA Forest Service, Pacific Northwest Region. The Court concluded that the aerial spraying of pesticides being conducted by the Forest Service is point source pollution and requires an NPDES permit under the Clean Water Act.

In a July 11, 2003 memorandum, US EPA issued interim guidance to states, indicating that, so long as a pesticide application is made in accordance with all FIFRA requirements, an NPDES permit is not needed. EPA will be soliciting public comment on the interim guidance via the Federal Register before determining a final federal position. It is unclear how the guidance applies in the Ninth Circuit. DPR will be working with the State Water Resources Control Board to review the guidance and discuss issues of its applicability to California. In the mean time, DPR recommends that Commissioners use caution in interpreting this guidance.

OTHER IMPORTANT WATER ISSUES

Consolidated Grants. The State Water Resources Control Board, in partnership with the California Bay/Delta Authority (CALFED U.S. Environmental Protection Agency (USEPA California Coastal Commission, and the California Resources Agency consolidated 8 different grants programs into one consolidated solicitation totaling approximately \$138 million. The partners requested proposal concepts that address nonpoint source, water quality, or watershed management issues. 660 concepts were received. After a technical review, applicants whose proposals are considered most competitive will be invited to develop their concepts into full proposals. The SWRCB has asked a number of agencies, including DPR, to assist with the review. DPR is participating so information is developed to help meet our regulatory needs and to be aware of the studies being conducted that may impact the pesticide regulatory program.

Bay Delta Authority Grants. The California Department of Conservation (DOC) has partnered with the Bay Delta Authority (CALFED) to offer new watershed coordinator grants primarily within the CALFED Solution Area. The CALFED Solution Area includes watersheds that contribute or receive water from the Bay-Delta System.

The grant program is intended to fund watershed coordinator positions for a three-year period. Funding will be provided through Proposition 50 beginning in Spring 2004; however, the request for proposals is scheduled for release this fall. The program will be open to qualified locally based non-profit organizations, special districts, and local governments.

In order to formulate a grant program that is responsive to local needs, DOC will be conducting a series of workshops to introduce the program and solicit input. Information about the workshops is available from the Dept. of Conservation at: rcd@consrv.ca.gov

CALENDAR OF EVENTS

CALIFORNIA WATERSHED FORUM

Friday, September 19, 2003

Cal EPA Building, Sacramento

9:00 AM-5:00 PM.

The California Watershed Forum will gather watershed stakeholders from around the state to a one-day forum focused on the future of watershed management policy in California. The forum will focus on new statewide watershed policy and the formation of the California Watershed Council, a new statewide advisory body. For registration information visit www.watershednetwork.org or www.watershed.org

CALIFORNIA 2003 NONPOINT SOURCE (NPS) CONFERENCE

“Restoring Clean Water: NPS Pollution Prevention And TMDLs”

November 5-7, 2003

Ventura, California

For further information, go to <http://www.swrcb.ca.gov/NPS/Fall2003.html>

FOR WATER ISSUES, the contact/coordinator for DPR is Kathy Brunetti at (916) 324-4100